

SERVICE DATE — OCTOBER 27, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36112

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY—  
PETITION FOR DECLARATORY ORDER

Digest:<sup>1</sup> The Board finds that the Los Angeles County Metropolitan Transportation Authority continues to be a rail carrier within the Board's jurisdiction.

Decided: October 25, 2017

On July 5, 2017, the Los Angeles County Metropolitan Transportation Authority (LACMTA) filed a petition for declaratory order, asking the Board to confirm its status as a rail carrier providing transportation subject to the jurisdiction of the Board. (Pet. 1.)<sup>2</sup> LACMTA states that it seeks clarification of its status in light of recent correspondence from the California State Board of Equalization (SBOE), in which SBOE concludes that LACMTA is not a rail carrier providing transportation subject to the jurisdiction of the Board. (Id.) There were no replies to LACMTA's petition.<sup>3</sup>

As discussed below, the Board finds that LACMTA continues to be a rail carrier providing transportation subject to the jurisdiction of the Board.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> LACMTA initially filed its petition for declaratory order on June 26, 2017, certifying that it served Randy Ferris, Chief Counsel of the California State Board of Equalization (SBOE), via first class mail. On June 28, 2017, LACMTA filed a corrected certificate of service certifying that it served David Gau, Executive Director of SBOE, via first class mail. On July 5, 2017, LACMTA filed an amended petition for declaratory order that included a photocopy of the original verification page and the amended certificate of service filed on June 28, 2017.

<sup>3</sup> LACMTA attached two letters of correspondence from SBOE to LACMTA discussing, in part, whether 49 U.S.C. § 11501(b)(4) (regarding the imposition of discriminatory taxes) applies to LACMTA. (See Pet., Ex. B.) This decision does not address that specific question, but instead addresses only the issue presented in LACMTA's petition regarding its status as a rail carrier providing transportation subject to the jurisdiction of the Board. SBOE did not respond to LACMTA's petition.

## BACKGROUND

LACMTA and its predecessor agency, the Los Angeles County Transportation Commission (LACTC), have been parties to several proceedings before the Board and the Board's predecessor, the Interstate Commerce Commission. For purposes of this proceeding, the Board will include only the most relevant procedural history.

In 1990 and 1992, LACMTA's predecessor, LACTC, acquired property and track structure from the Southern Pacific Transportation Company (SP) and the Atchison Topeka and Santa Fe Railway Company (ASTF), respectively. See S. Pac. Transp. Co.—Aban. Exemption—L.A. Cty., Cal., 8 I.C.C.2d 495 (1992); L.A. Cty. Transp. Comm'n—Acquis. Exemption—The Atchison, Topeka & Santa Fe Ry. (L.A. Cty. Acquisition), FD 32172 (ICC served Dec. 2, 1992). Although LACTC attempted to avoid any common carrier obligation, the ICC concluded that LACTC became a common carrier subject to the ICC's jurisdiction as a result of these acquisitions. See S. Pac. Transp. Co., 8 I.C.C.2d at 503-09; S. Pac. Transp. Co.—Aban. Exemption—L.A. Cty., Cal., 9 I.C.C.2d 385, 387-88 (1993); Orange Cty. Transp. Auth.—Acquis. Exemption—The Atchison, Topeka & Santa Fe Ry., 10 I.C.C.2d 78 (1994). In particular, the ICC found that the rights LACTC acquired were “so extensive” that LACTC “necessarily incur[red] an obligation to exercise these rights as a common carrier” absent abandonment or exemption authority from the agency. S. Pac. Transp. Co., 8 I.C.C.2d at 508; S. Pac. Transp. Co., 9 I.C.C.2d at 387-88; see also Orange Cty. Transp. Auth., 10 I.C.C.2d at 79, 84 (holding that commuter service restrictions on Santa Fe's freight service were “so extensive as to substantially impair the effect of the permanent easement for freight service retained by Santa Fe” and to render transit agencies common carriers). Among the “extensive” rights LACTC acquired over the lines were: authority to dictate scheduling and limit hours of freight operation, control of dispatching, control of operations and maintenance, and power to effectively force the selling carrier to curtail freight service. See S. Pac. Transp. Co., 8 I.C.C.2d at 508-09; S. Pac. Transp. Co., 9 I.C.C.2d at 388; Orange Cty. Transp. Auth., 10 I.C.C.2d at 83-87, 90-91.

While the ICC concluded that LACTC could not acquire the lines “without simultaneously acquiring a duty to provide freight service as a common carrier,” the ICC also exempted LACTC from ICC regulation under 49 U.S.C. Subtitle IV (with the exception of those statutory provisions from which the agency cannot grant exemptions). See S. Pac. Transp. Co., 8 I.C.C.2d at 512-13. The ICC explained that it did so, in part, to help LACTC fulfill its mission to provide mass transit passenger service. Id. at 512.<sup>4</sup>

In 1993, LACTC merged with the Southern California Rapid Transit District to form LACMTA. (Pet. 2.) In subsequent proceedings, the Board continued to describe LACMTA as having common carrier rights and obligations. See, e.g., L.A. to Pasadena Blue Line Constr.

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<sup>4</sup> In 1997, the Board clarified the scope of LACTC's, now LACMTA's, broad exemption from Subtitle IV. See Orange Cty. Transp. Auth.—Acquis. Exemption—The Atchison, Topeka & Santa Fe Ry., 2 S.T.B. 79 (1997).

Auth.—Aquis. Exemption—L.A. Cty. Metro. Transp. Auth., FD 34076, slip op. 3 (STB served Sept. 3, 2003) (“LACMTA will continue to have all of the common carrier rights and obligations it initially acquired. . .”).

On August 16, 2016, LACMTA received correspondence from the SBOE stating that, notwithstanding SBOE’s earlier position to the contrary, it now had concluded that LACMTA is not a rail carrier providing transportation subject to the jurisdiction of the Board and would therefore be subject to sales tax that SBOE had previously been prohibited from imposing under 49 U.S.C. § 11501(b)(4). (Pet. 4, Ex. B.) LACMTA requests that the Board issue a declaratory order confirming that it is a rail carrier providing transportation subject to the jurisdiction of the Board. Specifically, LACMTA argues that it retains the common carrier obligation its predecessor acquired when it purchased lines from SP and ASTF (*id.* at 4-6); that its exemption from Subtitle IV does not affect its underlying status as a rail carrier (*id.* at 6-7); and that its operation of mass transportation service does not affect its fundamental status as a rail carrier (*id.* at 8).

## DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or to remove uncertainty. The Board has broad discretion to determine whether to issue a declaratory order. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C.2d 675, 675 (1989). Here, LACMTA has asked the Board to issue a declaratory order confirming its status as a rail carrier providing transportation subject to the jurisdiction of the Board. The Board will issue a declaratory order to remove uncertainty regarding LACMTA’s status.

Section 10501 of title 49 gives the Board exclusive jurisdiction over transportation provided by a rail carrier. Section 10102(5) of title 49 defines “rail carrier” as a person providing common carrier railroad transportation for compensation. For the reasons stated below, the Board finds that LACMTA continues to be a rail carrier subject to the jurisdiction of the Board.

Multiple decisions previously served by the ICC and the Board have determined that, by obtaining significant control over freight operations, LACMTA’s predecessor acquired the obligations of a common carrier and became subject to the agency’s jurisdiction.<sup>5</sup> In later transactions, the ICC and the Board have reiterated that even though LACMTA primarily provides commuter rail services, it retains the common carrier obligation of its predecessor. See, e.g., L.A. to Pasadena Blue Line Constr. Auth., FD 34076, slip op. at 3; L.A. Cty. Metro. Transp. Auth.—Aban. Exemption—in L.A. Cty., Cal., AB 409 (Sub-No. 6X), slip op. 2-3 (STB served Feb. 8, 2012). And although the Board has acknowledged that LACMTA has terminated its

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<sup>5</sup> See S. Pac. Transp. Co., 8 I.C.C.2d at 507-09; S. Pac. Transp. Co., 9 I.C.C.2d at 387-88; Orange Cty. Transp. Auth., 10 I.C.C.2d at 79, 84, 90-91.

common carrier obligation over certain line segments, LACMTA has not yet followed the Board-specified procedures to do so on the remaining line segments that it obtained agency authority to acquire.<sup>6</sup> Moreover, it is well established that an exemption granted under 49 U.S.C. § 10502—like LACMTA’s exemption here from most provisions of Subtitle IV—may remove the agency’s regulatory authority under those provisions, but does not remove the agency’s jurisdiction over the rail carrier or rail line at issue. See, e.g., G. & T. Terminal Packaging Co. v. Consol. Rail Corp., 830 F.2d 1230, 1234-35 (3d Cir. 1987); Consol. Rail Corp.—Pet. for Declaratory Order—Suspension of Serv., EP 346 (Sub-No. 14B) (ICC served June 13, 1989).

Nothing submitted in this proceeding indicates any change to LACMTA’s status or degree of control over freight operations. Nor does the record contain any evidence to undermine either (1) the ICC’s original determination that LACTC’s 1990 and 1992 purchases made it a common carrier subject to the Board’s jurisdiction or (2) the Board’s subsequent affirmations of LACMTA’s common carrier obligation. Therefore, LACMTA remains a rail carrier subject to the jurisdiction of the Board.

It is ordered:

1. LACMTA’s petition for declaratory order is granted to the extent discussed above.
2. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.

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<sup>6</sup> See, e.g., L.A. Cty., AB 409 (Sub-No. 6X), slip op. at 3 (denying as moot LACMTA’s notice of exemption to terminate its residual common carrier obligation over one line segment, and stating that future abandonments of LACMTA’s common carrier obligation would require only the submission of a letter explaining how LACMTA meets certain criteria). LACMTA asserts here that it retains a common carrier obligation with respect to multiple lines of railroad acquired by its predecessor from ASTF and SP. (See Pet. 3-4.)